

PURCHASING AND LICENSING COMMITTEE

09-031-O

REPLACEMENT
AS AMENDED

ORDINANCE NO. 9981

AN ORDINANCE MODIFYING CHAPTER 41 PURCHASING PROVISIONS,
AMENDING SECTIONS 41-1, 41-6, 41-10, 41-15, 41-16,
41-23, 41-24, 41-28, AND REPEALING SECTIONS 41-7, 41-8,
41-11, 41-12, 41-13, 41-14, 41-25, 41-26 AND 41-31 OF
THE DULUTH CITY CODE, 1959, AS AMENDED.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 41-1 of the Duluth City Code, 1959, as amended,
is hereby amended to read as follows:

Sec. 41-1. Definitions.

For the purposes of this Chapter, the following words and
phrases shall have the meanings respectively ascribed to them by
this Section:

~~Board. The board of standardization and specification of the
city.~~

Contractual services. All telephone, gas, water, electric
light and power service, towel and cleaning service, insurance,
leases for all grounds, buildings, office or other space required by
the using agencies and the rental, repair or maintenance of
equipment, machinery and other city owned personal property. The
term shall not include professional and other contractual services
which are in their nature unique or noncompetitive.

Supplies. All supplies, materials and equipment.

Using agency. Any department, agency, commission, bureau or
other unit in the city government using supplies or procuring
contractual services, as provided for in this Chapter.

Section 2. That Section 41-6 of the Duluth City Code, 1959, as amended,
is hereby amended to read as follows:

Sec. 41-6. Same--Powers and duties.

In addition to any other powers and duties conferred by this

Chapter, the city purchasing agent shall have the following powers and duties:

(a) ~~To~~ The agent shall act to procure for the city the highest quality in supplies and contractual services at least expense to the city;

(b) ~~To~~ The agent shall discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases and sales;

(c) ~~To~~ The agent shall establish and amend when necessary all rules and regulations authorized by this Chapter and any others necessary to its operation;

(d) The agent shall keep informed of current developments in the field of purchasing, prices, market conditions and new products and secure for the city the benefits of research done in the field of purchasing by other governmental jurisdictions, national technical societies, trade associations having national recognition and private businesses and organizations;

(e) ~~To~~ The agent shall prescribe and maintain such forms as he shall find reasonably necessary to the operation of this Chapter;

(f) ~~To~~ The agent shall prepare and adopt a standard purchasing nomenclature for using agencies and suppliers;

(g) ~~To prepare, adopt and maintain a vendors' catalog file. Such catalog shall be filed according to materials and shall contain descriptions of vendors' commodities, prices and discounts;~~

~~(h)~~ The agent shall exploit the possibilities of buying "in bulk," so as to take full advantage of discounts;

~~(i) The agent shall act so as to procure for the city all federal and state tax exemptions to which it is entitled;~~

(h) The agent shall cooperate with the department of finance

and records or any other similar city department so as to secure for the city the maximum efficiency in budgeting and accounting;

(i) ~~(k)~~ ~~To~~ The agent shall declare vendors who default on their quotations irresponsible bidders and to disqualify them from receiving any business from the city for a stated period of time;

(j) The agent or his/her designee shall write specifications. All specifications shall be definite and certain and shall permit competition; provided, however, that the provisions of this Section shall not apply to unique or noncompetitive articles;

(k) The agent shall consult with the heads of other officials of the using agencies to determine their precise requirements and shall endeavor to prescribe those standards which meet the needs of the majority of such agencies.

Section 3. That Sections 41-7 and 41-8 are hereby repealed in their entirety.

Section 4. That Section 41-10 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 41-10. Same--Powers and duties regarding standard specifications.

~~The board of standardization and specification~~ purchasing agent shall have the following powers and duties:

(a) To classify all the supplies used by the various branches of the city government;

(b) ~~(To adopt as standards the minimum number of qualities, sizes and varieties of supplies consistent with the successful operation of the city government;~~

~~(c)~~ To prepare and adopt written specifications of all such standard supplies.

Section 5. That Sections 41-11, 41-12, 41-13, and 41-14 are hereby repealed in their entirety.

Section 6. That Section 41-15 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 41-15. ~~Same~~—Effect of adoption of standard specifications.

After its adoption, each standard specification shall, until revised or rescinded, apply alike in terms and effect to every future purchase and contract for the supply described in such specification.

The city purchasing agent ~~with the approval of the board of standardization and specification,~~ shall have the authority to exempt any using agency of the city for use of the supply described in such standard specification.

Section 7. That Section 41-16 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 41-16. Purchases and contracts for services.

The city purchasing agent shall purchase or contract for all supplies and contractual services needed by any using agency which derives its support wholly or in part from the city, in accordance with purchasing procedures as prescribed by this Chapter and such rules and regulations as the agent shall adopt for the internal management and operation of the purchasing division ~~and such other rules and regulations as shall be prescribed by the administrative assistant and the city council.~~

Except as provided in this Chapter, it shall be unlawful for any city officer to order the purchase of any supplies or make any contract within the purview of this Chapter other than through the purchasing division. Any purchase ordered or contract made contrary to the provisions of this Chapter shall not be approved by the city officials and the city shall not be bound thereby unless proper justification is provided.

Section 8. That Section 41-23 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 41-23. Contract procedure--contracts exceeding ~~\$25,000~~ ~~\$100,000~~ \$50,000.

Purchase of all supplies and contractual services exceeding an estimated cost of ~~\$25,000~~ ~~\$100,000~~ \$50,000 shall be made by the purchasing agent pursuant to the provisions of this Section either by formal written contract or upon a properly executed purchase order, whichever method such purchasing agent deems appropriate, from the lowest responsible bidder after due notice inviting proposals. All sales of personal property when the estimated value shall exceed ~~\$25,000~~ ~~\$100,000~~ \$50,000, shall be made by formal written contract or such other means of conveyance as the city attorney may prescribe to the highest responsible bidder after due notice inviting proposals.

(a) Notice inviting bids;

(1) Published notice. Notice inviting bids shall be published in at least two issues of the official newspaper of the city or shall be published on the city's Internet website. The time set for the opening of such bids shall be not less than ten days from the date of the last publication of such notice in said newspaper or not less than 11 days after its publication on said website. Such notice shall include a general description of the articles to be purchased or sold, shall state where bid blanks and specifications may be secured and the time and place of opening bids;

(2) Bidders list. The city purchasing agent shall also solicit sealed bids from all responsible prospective suppliers who have requested their names to be added to a "bidders list,"

which the purchasing agent shall maintain, by sending them a copy of such newspaper notice or such other notice as will acquaint them with the proposed purchase or sale. In any case, invitations sent to the vendors on the bidders list shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent;

~~(3) Bulletin board. The city purchasing agent shall also advertise all pending purchases or sales by a notice posted on the public bulletin board in the city hall;~~

(b) Bid deposits. When deemed necessary by the city purchasing agent, bid deposits shall be prescribed in the public notices inviting bids. Unsuccessful bidders shall be entitled to return of such deposits where the purchasing agent has required such. A successful bidder shall forfeit any such deposit required by the purchasing agent upon failure on his part to enter a contract within ten days after the award. For the purpose of this Subsection, the term "deposit" shall mean cash, cashier's check, certified check or corporate surety bond;

(c) Bid opening procedure;

(1) Sealed bids. Bids shall be submitted sealed to the purchasing agent and shall be identified as bids on the envelope;

(2) Opening. Bids shall be opened in public at the time and place stated in the public notices;

(3) Tabulation. A tabulation of all bids received shall be posted for public inspection;

(d) Rejection of bids. The city purchasing agent shall have the authority to reject all bids, parts of all bids or all bids for any one or more supplies or contractual services included in the

proposed contract when the public interest will be served thereby. The purchasing agent may reject the bid of a contractor who is in default on the payment of taxes, licenses or other money due the city;

(e) Award of contract;

(1) Authorization by city council. Contracts within the purview of this Section shall be awarded only after authorization by resolution of the city council;

(2) Lowest responsible bidder. Contracts shall be awarded to the lowest responsible bidder. In determining lowest responsible bidder, in addition to price, the purchasing agent shall consider:

(A) The ability, capacity and skill of the bidder to perform the contract or provide the service required;

(B) Whether the bidder can perform the contract or provide the service promptly or within the time specified without delay or interference;

(C) The character, integrity, reputation, judgment, experience and efficiency of the bidder;

(D) The quality of performance of previous contracts or services;

(E) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;

(F) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;

(G) The quality, availability and adaptability of the supplies or contractual services to the particular use required;

(H) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;

(I) The number and scope of conditions attached to the bid;

(J) The new best-value contracting law for construction projects only;

(3) Award to other than low bidder. When the award is not given to the lowest bidder, a full and complete statement of the reason for placing the order elsewhere shall be prepared by the purchasing agent and filed with the other papers relating to the transaction;

(4) Tie bids;

(A) Local vendors. If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to a local bidder. If two or more local bidders submit tie bids, the purchasing agent shall award the contract to one of the tie bidders by drawing lots in public;

(B) Outside vendors. Where tie bids are submitted by outside vendors, the purchasing agent shall award the contract to one of the tie bidders by drawing lots in public;

(5) Performance bonds. The city purchasing agent shall have the authority to require a performance bond, before entering a contract, in such amount as he shall find reasonably necessary to protect the best interests of the city. He shall require a performance bond in every case where a law specifically requires the furnishing of a bond as a condition precedent to the awarding of a contract for the doing of any public work or the making of any public improvement;

(f) Prohibition against subdivision. No contract or pur-

chase shall be subdivided to avoid the requirements of this Section.

Section 9. That Section 41-24 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 41-24. Same--Contracts of ~~\$25,000~~ ~~\$100,000~~ \$50,000 or less.

Purchases of supplies and contractual services and all sales of personal property involving ~~\$25,000~~ ~~\$100,000~~ \$50,000 or less shall be made pursuant to the provisions of this Section either by formal written contract or upon a properly executed purchase or sale order, whichever method is deemed appropriate.

(a) Bidding procedures;

(1) Contracts between ~~\$10,000~~ \$25,000 and ~~\$25,000~~ ~~\$100,000~~ \$50,000. If the amount of the contract is estimated to exceed ~~\$10,000~~ \$25,000 but not to exceed ~~\$25,000~~ ~~\$100,000~~ \$50,000 the purchasing agent shall make such purchases or sales by direct negotiation, obtaining two or more quotations when possible, ~~unless the finance director of the city directs that such purchase or sale be made pursuant to the formal bidding procedures set forth in Section 41-23 of this Code.~~ All quotations obtained shall be kept on file for a period of at least one year after receipt thereof;

(2) Contracts of ~~\$10,000~~ \$25,000 or less. If the amount of the contract is estimated to be ~~\$10,000~~ \$25,000 or less, the purchasing agent may, in his discretion, make the purchase or sale either upon quotation or in the open market. If the contract is made upon quotation, it shall be based, so far as practicable, on at least two quotations, which shall be kept on file for a period of at least one year after receipt thereof;

(3) Purchases of ~~\$2,500~~ \$5,000 or less. In the case of purchases estimated to be ~~\$2,500~~ \$5,000 or less, department heads or their designees are authorized to make such purchases without the approval of the purchasing agent. Such purchases may be made either upon quotation or in the open market. If such purchases are made

upon quotation, they shall be based, so far as practicable, on at least two quotations, which shall be kept on file for a period of at least one year after receipt thereof;

(b) Rejection of bids. The purchasing agent or other person authorized to make purchases shall have the authority to reject all bids, parts of all bids or all bids for any one or more supplies or contractual services included in the proposed contract when the public interest will be served thereby. The purchasing agent or other person authorized to make purchases may reject the bid of a contractor who is in default on the payment of taxes, licenses or other money due the city;

(c) Award of contract. The purchasing agent or, subject to the limitations of paragraph (a)(3) of this Section, other persons authorized to make purchases shall have authority to award contracts within the purview of this Section, provided that contracts for more than ~~\$10,000~~ \$25,000 with sole source providers or for which only one complete responsive bid was received shall be awarded only after authorization by the city council;

(d) Performance bonds. The provisions regarding performance bonds contained in Section 41-23 of this Code are hereby incorporated into this Section.

Section 10. That Sections 41-25 and 41-26 are hereby repealed in their entirety.

Section 11. That Section 41-28 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 41-28. Inspection and testing.

The city purchasing agent shall ~~inspect or supervise~~ provide oversight of the inspection of all deliveries of supplies or contractual services to determine their conformance with the specifications set forth in the order or contract.

The purchasing agent shall have the authority to authorize

using agencies having the staff and facilities for adequate inspection to inspect all deliveries made to such using agencies under rules and regulations which the purchasing agent shall prescribe.

The purchasing agent shall have the authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with the specifications. In the performance of such tests, the purchasing agent shall have the authority to make use of laboratory facilities of any agency of the city government or of any outside laboratory.

Section 12. That Section 41-31 is hereby repealed in its entirety.

Section 13. That this ordinance shall take effect 30 days after its passage and publication.

Approved:

Approved for presentation to council:

Department Director
Initialed by_____

Chief Administrative Officer

Purchasing Agent

Approved as to form:

Approved:

Attorney

Auditor

PURCHASING JC:DS:le 6/1/2009

STATEMENT OF PURPOSE: This ordinance approves changes to the City Code Chapter 41, Purchasing. Chapter 41 defines the role of the city purchasing agent and sets forth the manner in which the city enters into contracts for the purchase of certain services and materials and for sale of surplus personal property.

The Code currently requires all purchases over \$25,000 to be made by sealed bid. This was the amount Minnesota Statutes required for sealed bids in 1999. In 2000, Minnesota Statute 471.345, the Uniform Municipal Contracting Law, increased the limit required for sealed bids to \$50,000. Again in 2008, the limit was increased to \$100,000. The purpose of this ordinance is to update the city's limits to conform with state statute. Efficiencies to be had by this update include decreasing the number of resolutions required to be handled by staff and city council and shortening the city's time frame for receiving services and goods of a lesser magnitude. The city council will still have the control of the purchasing process by virtue of its control of the city budget.

The ordinance also deletes language which is no longer applicable due in part to changes in technology and changes in the way the city does business. For example, there is no longer a board of standardization or a Miller Memorial Hospital board of standardization and specification, and therefore, references to those boards have been deleted. Finally, there were minor reorganization changes made to facilitate the reading of the ordinance.